In The

Supreme Court of Mayflower

No. 02-33

AEROLIFTS, ET AL.,

Petitioner,

v.

SADOIMPACTO,

Respondent.

Direct Application to the Supreme Court
For Inherent Jurisdiction Review

Before TURNTABLE, *Chief Justice,* TOTORO, STICKZA, CLARKE, CABOT, XIQAQ, KHALED, MANDATORY and KRABZ, *Associate Justices.*

CABOT, J., delivered the opinion of the unanimous Court.

Plaintiffs petition this Court on an emergency basis to handle the now largely repealed Attorney General's directive which sought to revoke "any and all law enforcement authorities previously vested in or exercised by the individuals named" in his directive. See App 1a. We ordered counsel to brief the jurisdictional issue for us to review and dispose of on that basis. Now that the factual issues are largely resolved we deliver an opinion based solely on subject matter jurisdiction.

In turn, we find that the Court, acting under its grant of original jurisdiction, complimented by longstanding tradition in the English common law, possesses the inherent authority to review this challenge directly. Further analysis is given in relation to this inherent power, how it ought to be exercised and the implications of this power of review.

However, we dismiss the application solely on the basis that the factual dispute has been resolved by the Judicial Committee of the Privy Council. We do not dismiss the application on the basis that there is (or was) any jurisdictional deficiency. Accordingly, the issue of this court's jurisdiction should be treated as good and binding law.

I.

Before continuing further, it is helpful to define what Inherent Jurisdiction Review is and means. Inherent Jurisdiction Review is the exercise of our inherent grant of jurisdiction contained in Art. X, § 2 of the Mayflower State Constitution *upon direct application* to the Court. It permits us to weigh in "[i]n all cases… in which the state shall be a party." *Id.* It also vests us with a unique and positive mandate where "[the Supreme Court] shall be protectors of this Constitution." *Id.* Therefore, the origin of this power is not even *new* or radical, it is a simple recognition and restatement of our existing constitutional apparatus. The basis for this type of review will be explored in-depth below along with the circumstances in which its exercise is fitting.

A.

Its origin, like most mandates this Court exercises, is the Constitution. It has long been recognized that "[…] original jurisdiction favors parties that want clear answers from the high court, and it disfavors those who prefer a more circuitous path to resolution or who prefer to shop among lower court judges." Z.D. Clopton, 'Power and Politics in Original Jurisdiction', 91 U. Chi. L. R. 83, 90 (2024). In matters of public interest, where the constitutional and individual stakes are so high, it is only natural for this court to exercise its original grant of jurisdiction to prevent tactics like judge-shopping which malign the lower courts. As delays are becoming more frequent across the judiciary, summary dispositions of these matters through the shadow docket may become more commonplace and even at times desired. See generally, S. Vladeck, *The Shadow Docket: How the Supreme Court Uses Stealth Rulings to Amass Power and Undermine the Republic* (2023). Such a speedy administration of justice can only come from the canals of this Court.

The State Constitution also demands that we *shall* be the protectors of the Constitution. That uniquely provides this Court with a positive obligation and mandate to not just *defend* the Constitution—but to *protect* it. That calls for the Court to, proactively rather than defensively, "say what the law is" in no uncertain terms. *Marbury* v.

Madison, 5 U.S. 137 (1803). This more liberal construction of the grant of original jurisdiction is not just by linguistic implication but is also implied by the Constitution's grant of power to the Supreme Court with advisory opinions. Mf. Const., Art. X, § 9. A proposal to include an advisory opinion mechanism in the Union Constitution was defeated at the Constitutional Convention and the Union Supreme Court also rejects the existence of such at a federal level. See e.g., *Hayburn's Case*, 2 U.S. 409, 410 (1792); *Muskrat* v. *United States*, 219 U.S. 346, 361–63 (1911).

The point made here is that any comparison made to the Union Supreme Court's *lack* of such powers does not negate the existence of our more unique and extensive inherent powers. The fact that the grant of original jurisdiction is made as preamble before an explicit grant of appellate jurisdiction in the State Constitution reaffirms the existence of this inherent power. Such a structural mandate uniquely reaffirms this Court's decision to bring Inherent Jurisdiction Review to the forefront of judicial review through matters that involve public interest. Its existence is undeniable and is in tune with the spirit of accountability that binds the fabric of this Union.

B.

Now that our inherent jurisdiction ostensibly exists, the opinion will now explore its purpose and the test to surpass when filing an application for Inherent Jurisdiction Review. The purpose of Inherent Jurisdiction Review is to primarily allow for the challenge (preemptive or not) of an act of either the Legislature or the Executive to this Court for direct review.

The standing of individuals bringing a challenge for direct review is a non sequitur so long as the challenge is specific, brought in good faith and is litigated in an equitable timeframe to the threat of the alleged action. State courts have long recognized, either through their Constitutions or statutes, that individuals may litigate in public interest, in stark comparison to the federal law of standing. See e.g., *Hollingsworth* v. *Perry*, 133 S. Ct. 2652, 2662-67 (2013). The core proposition is that every citizen suffers an injury when public officials fail to uphold the state constitution or fail to properly fulfill a public duty, and these failures allow any individual to have standing in court. Because the Arkansas State Constitution has largely inspired the spirit and nature of protections our citizens possess, we give large weight to it today.

Simply put "[w]hen… the proceedings are for the enforcement of a duty affecting not a private right, but a public one, common to the whole community, it is not necessary that the relator should have a special interest in the matter…" *Wells* v. *Purcell*, 592 S.W.2d 100, 103 (Ark. 1979). This relaxation of standing when exercising review under our original jurisdiction comes from the judiciary's final say over the constellation of requirements encompassed by justiciability. As a judicially made doctrine, justiciability is malleable and today it bends for good cause. See Louis L. Jaffe, 'Standing to Secure Judicial Review: Public Actions', 74 Harv. L. Rev. 1265, 1296 (1961).

C.

The first hurdle that any petitioner must overcome when making an application for Inherent Jurisdiction Review is public interest. The Court will ask itself the question: Does the application involve an act of the executive or legislature that adjacently impacts constitutional doctrine? Public interest has its roots in [English] 'Crown Privilege' where the Crown was expected to act in the interests of its people through stances in litigation. *Conway* v. *Rimmer* [1968] AC 910. That has now moved on, but the issue of public interest is deeply embedded as a doctrine throughout our shared common law. Its transposal here as a preliminary hurdle is necessary to prevent our use of original jurisdiction becoming a tool for resolving petty disputes. Petty disputes include criminal prosecutions, ordinary civil claims and expungements. Essentially, only matters of *constitutional magnitude* will qualify for review.

An indication that a matter is one of *constitutional magnitude* and thus passes this hurdle is that it encompasses concerns over: checks and balances, separation of powers, natural justice, constitutional rights and the basic structure of the Constitution. Other preliminary factors that will decide whether this first hurdle has been overcome include: (1) whether the matter would likely be appealed and the Court would grant review on the merits in the future anyway, and (2) if the harm incurred by petitioner could be described as "devastating and immeasurable" if the lower court process were allowed to play out. This is a facts-based and facts-sensitive analysis that will depend on the underlying context contained in each case.

D.

Assuming the first hurdle is met, for the case to succeed and a writ to be issued by the Court the second hurdle must be met. The

question asked by the Court in considering whether the second hurdle is met is: Is the measure constitutionally justifiable?

In answering this question, the Court must be persuaded that the measure is so irrational or unreasonable that no legislator or executive officer would engage in such an act if they had true fidelity to the basic structure, power and contents of the Constitution.

Examples of acts that would be found to be constitutionally unjustifiable include: the Senate abolishing the judicial contempt power or making its exercise dependent on another branch; the Governor dissolving the Senate permanently or to extend his or her own term of office beyond the constitutional limit; the Legislature abolishing the right to vote in general elections or restricting the franchise to an arbitrarily narrow class; the Senate stripping the courts of their core power of judicial review or making the enforcement of judgments subject to executive approval; the Executive claiming the power to detain citizens indefinitely without trial; the Legislature abolishing constitutional rights such as freedom of expression without observing the amendment procedures; or the Senate purporting to abolish the Constitution itself without convening the prescribed amendment process.

In determining whether an exercise is unreasonable or irrational we will look to a range of factors including: the historical exercise of such powers, the customs and practices surrounding such powers, our own case law and the contemporary standards expected of the executive and legislative departments. *Cf.* Robert W. Gordon, *Taming the Past: Essays on Law in History and History in Law* (2017) ("[T]he historicized past poses a perpetual threat to the legal rationalizations of the present.") Therefore, if a measure is found to be constitutionally unjustifiable the Court need not strike it down, for it is a nullity from its immediate conception. The Court will simply issue a writ to recognize the action's status as a nullity to vindicate the rights of the parties involved and the wider public interest.

II.

In turn, because the measure before us in this case is resolved on the factual issues, we see no issue to analyse the matter any further. The opinion of the Court remains good, binding and precedential law. For the reasons made previously the petition is hereby,

DISMISSED.